

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELLA J. GROSS and DEPARTMENT OF THE NAVY,
NAVAL ORDNANCE STATION, Indian Head, MD

*Docket No. 98-1777; Oral Argument Held May 4, 1999;
Issued October 19, 1999*

Appearances: *Harold Levi, Esq.*, for appellant; *Sheldon G. Turley, Jr., Esq.*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability on March 29, 1996 causally related to her April 11, 1985 employment injury.

On April 11, 1985 appellant, then a 45-year-old equipment specialist, sustained a left knee contusion and temporary aggravation of chondromalacia patella in the performance of duty when she fell onto a railroad track at work.

On April 18, 1996 appellant filed a claim for a recurrence of disability on March 29, 1996 which she attributed to her April 11, 1985 employment injury.

In a form report dated April 18, 1996, Dr. Peter S. Trent, a Board-certified orthopedic surgeon, diagnosed a lumbar strain and medial meniscus tear and indicated by checking the box marked "yes" that the condition was causally related to appellant's April 11, 1985 employment injury. He stated that appellant had been treated by him from May 3, 1985 to November 16, 1990 and that she had returned to work on April 18, 1996.

By decision dated January 7, 1997, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence of record failed to establish that the claimed recurrence of disability on March 29, 1996 was causally related to the April 11, 1985 employment injury.

In an undated letter received by the Office on February 7, 1997, appellant requested reconsideration of the denial of her claim and submitted additional evidence.

In a report dated January 27, 1997, Dr. Trent related that appellant sought treatment from him on April 18, 1996 because of progressive pain in the left knee. He stated that his initial

impression was that of degenerative joint disease involving the knee and that this was a slowly progressive condition consistent with the April 11, 1985 employment injury and with appellant's history of slowly increasing pain, discomfort and swelling over the years. He stated:

"It is my belief, based upon a reasonable degree of medical certainty, that [appellant] sustained an injury to the left knee on [April 11, 1995] which was the competent producing mechanism of a gradual development of degenerative joint disease in the left knee. The findings of the MRI [magnetic resonance imaging] scan of arthritic changes, particularly in the front of the knee, is most consistent with the mechanism of injury. Additionally, the historical detail given by [appellant] are consistent with the gradual development of a progressive condition. Further, there is ample precedent for this presentation; namely, the development of post-traumatic arthritis of a major weight-bearing joint a number of years after an injury."

* * *

"Although it is true to say that [appellant] may experience acute exacerbations of pain and swelling in the knee due to the activities of daily life and minor trauma thereto, I believe that the fundamental problem which [appellant] has is the degenerative condition resulting from the accident of [April 11, 1995] and that therefore her current condition is related to this accident."

In a memorandum dated May 7, 1997, an Office medical adviser stated that the finding of a partial tear in lateral structures was consistent with an acute injury but that the recurrence of knee pain 12 years after the initial injury did not indicate a causal relationship. He stated, "If some bridging information is presented to document ongoing symptoms and treatment this case will be considered by me."

By decision dated May 8, 1997, the Office denied modification of its January 7, 1997 decision.

The Board finds that this case is not in posture for a decision due to an unresolved conflict in the medical opinion evidence.

In this case, appellant sustained a left knee injury in the performance of duty on April 11, 1985. On April 18, 1996 she filed a claim alleging that she sustained a recurrence of disability on March 29, 1996 which she attributed to her 1985 employment injury.

In a form report dated April 18, 1996, Dr. Trent diagnosed a lumbar strain and medial meniscus tear and indicated by checking the box marked "yes" that the condition was causally related to appellant's April 11, 1985 employment injury. In a report dated January 27, 1997, Dr. Trent stated that appellant consulted him concerning progressive pain in the left knee and he stated that his initial impression was that of degenerative joint disease involving the knee and that this was a slowly progressive condition consistent with the April 11, 1985 employment

injury and with appellant's history of slowly increasing pain, discomfort and swelling over the years. He stated:

"It is my belief, based upon a reasonable degree of medical certainty, that [appellant] sustained an injury to the left knee on [April 11, 1985] which was the competent producing mechanism of a gradual development of degenerative joint disease in the left knee. The findings of the MRI scan of arthritic changes, particularly in the front of the knee, is most consistent with the mechanism of injury. Additionally, the historical detail given by [appellant] are consistent with the gradual development of a progressive condition. Further, there is ample precedent for this presentation; namely, the development of post-traumatic arthritis of a major weight-bearing joint a number of years after an injury."

* * *

"Although ... [appellant] may experience acute exacerbations of pain and swelling in the knee due to the activities of daily life and minor trauma thereto, I believe that the fundamental problem which [appellant] has is the degenerative condition resulting from the accident of [April 11, 1985] and that therefore her current condition is related to this accident."

In a memorandum dated May 7, 1997, an Office medical adviser stated that the finding of a partial tear in lateral structures was consistent with an acute injury but that the recurrence of knee pain 12 years after the initial injury did not indicate a causal relationship. He stated, "If some bridging information is presented to document ongoing symptoms and treatment this case will be considered by me." Although the Office medical adviser indicated that he did not believe the claimed recurrence of disability was caused by the 1985 employment injury, he did not explain why the 1985 injury could not have aggravated appellant's arthritis condition as described by Dr. Trent. Furthermore, he indicated that he might have a different opinion concerning causal relationship if bridging information was forthcoming.

Section 8123(a) of the Act provides in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."¹ When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of the Act, to resolve the conflict in the medical evidence.²

The Board finds that there is a conflict in the medical evidence between the Office medical adviser and appellant's physician, Dr. Trent, on the issue of whether appellant sustained a recurrence of disability on March 29, 1996 causally related to her April 11, 1985 employment injury. Consequently, the case must be referred to an impartial medical specialist to resolve the conflict in the medical opinion evidence. On remand, the Office should refer appellant, along

¹ 5 U.S.C. § 8123(a).

² *William C. Bush*, 40 ECAB 1064, 1975 (1989).

with the case file and the statement of accepted facts, to an appropriate specialist for an impartial medical evaluation and report including a rationalized opinion on whether appellant sustained a recurrence of disability on March 29, 1996 causally related to her April 11, 1985 employment injury. After such further development as the Office deems necessary, the Office should issue a *de novo* decision regarding appellant's claim.

The decision of the Office of Workers' Compensation Programs dated May 8, 1997 is set aside and the case is remanded for further action consistent with this decision of the Board.

Dated, Washington, D.C.
October 19, 1999

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member